

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

**MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC )**

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Participant in Auction No. 61 and Licensee of Various )  
Authorizations in the Wireless Radio Services )

Applicant for Modification of Various )  
Authorizations in the Wireless Radio Services )

**ENCANA OIL AND GAS (USA), INC.; )  
DUQUESNE LIGHT COMPANY; DCP )  
MIDSTREAM, LP; JACKSON COUNTY RURAL )  
MEMBERSHIP ELECTRIC COOPERATIVE; )  
PUGET SOUND ENERGY, INC.; ENBRIDGE )  
ENERGY COMPANY, INC.; INTERSTATE POWER )  
AND LIGHT COMPANY; WISCONSIN POWER )  
AND LIGHT COMPANY; DIXIE ELECTRIC )  
MEMBERSHIP CORPORATION, INC.; ATLAS )  
PIPELINE – MID CONTINENT, LLC; DENTON )  
COUNTY ELECTRIC COOPERATIVE, INC., )  
DBA COSERV ELECTRIC; AND SOUTHERN )  
CALIFORNIA REGIONAL RAIL AUTHORITY )**

Application File Nos.  
0004030479, 0004144435,  
0004193028, 0004193328,  
0004354053, 0004309872,  
0004310060, 0004314903,  
0004315013, 0004430505,  
0004417199, 0004419431,  
0004422320, 0004422329,  
0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962

For Commission Consent to the Assignment of )  
Various Authorizations in the Wireless Radio )  
Services )

To: Marlene H. Dortch, Secretary

Attention: Richard L. Sippel, Chief Administrative Law Judge

**PINNACLE WIRELESS RESPONSE TO  
JOINT MOTION OF ENFORCEMENT BUREAU AND MARITIME  
FOR SUMMARY DECISION ON ISSUE G**

Pinnacle Wireless ("Pinnacle"), by undersigned counsel and pursuant to the schedule for this proceeding adopted by Order, FCC 13M-19 (October 25, 2013), hereby files this Response to the Joint Motion of the Enforcement Bureau and Maritime Communications/Land Mobile LLC ("Maritime") for Summary Decision on Issue (g) ("Joint Motion").

Based on the showings made in the Joint Motion it is clear that Issue (g) is ripe for summary judgment. Issue (g) addresses only (i) whether Maritime's site-based facilities were timely constructed within two years of initial authorization, and (ii) whether those facilities have been permanently discontinued. As set forth in the Joint Motion, there are only 16 Maritime site-based facilities remaining after the settlement reached between Maritime and the Enforcement Bureau pursuant to which all of the other Maritime site-based facilities are being cancelled and/or surrendered. As the Enforcement Bureau recognizes, the only possible conclusion based on the undisputed facts in the record is that the 16 remaining site-based facilities were timely constructed and have not been permanently discontinued.

### **DISCUSSION**

#### **I. Summary Decision is Warranted Based on the Undisputed Facts.**

As a lessee of Maritime site-based spectrum, Pinnacle has a very strong interest in the outcome of this proceeding, particularly with regards to Issue (g). As previously established in this proceeding,

Pinnacle is a lessee of Maritime's spectrum and relies on Maritime's spectrum in its business enterprises which Pinnacle leases to support its construction of trunked radio networks operated by two New Jersey agencies in connection with "critical communications" (e.g., GSP for drivers on New Jersey Turnpike and Garden State Parkway). Pinnacle also has made investments to construct these networks on Maritime spectrum for agencies of New Jersey.

Order, FCC 12M-2, ¶9 (January 18, 2012) (granting Pinnacle's Petition to Intervene in this proceeding and designating Pinnacle as a Party).

**A. The Site Authorizations Leased to Pinnacle Are Operational**

Pinnacle provided extensive information in Pinnacle's sworn responses to the Enforcement Bureau's Interrogatories detailing Pinnacle's several spectrum leases with Maritime and Maritime's predecessor, Mobex Network Services ("Mobex").<sup>1</sup> Pinnacle's sworn interrogatory responses also detailed Pinnacle's construction of the site-based authorizations Pinnacle leases from Maritime beginning in late 2005, as well as Pinnacle's continuing and ongoing operation of a Statewide system in New Jersey utilizing spectrum authorized under WRV374 to provide critical communications services to the New Jersey Turnpike Authority and the New Jersey Sports and Exposition Authority.<sup>2</sup> As shown in Pinnacle's sworn interrogatory responses and in the Joint Motion, Pinnacle's ongoing and extensive operations under the following Maritime site authorizations pursuant to spectrum leases are well established and undisputed in the record: WRV374-14 (Selden), WRV374-15 (Verona), WRV374-16 (Allentown), WRV374-18 (Valhalla), WRV374-25 (Perrinville), and WRV374-33 (One World Trade Center). Joint Motion at ¶ 22. Accordingly, in light of the extensive record evidence demonstrating the ongoing and continuing operation of these stations, it is undisputed that they are *not* permanently discontinued.

**B. These Site Authorizations Were Timely Constructed**

As shown in the Joint Motion (at ¶¶ 14-16), the record evidence demonstrates that the site-based facilities leased by Pinnacle from Maritime were timely constructed, and there is no evidence to the contrary. Indeed, as the Joint Motion explains, the issue of timely construction was already adjudicated by both the Wireless Bureau and the Commission—in *proceedings in*

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<sup>1</sup> See Pinnacle Response to Enforcement Bureau's First Set of Interrogatories and First Set of Requests for Production of Documents, filed April 10, 2012 ("Pinnacle Discovery Responses"). The Pinnacle Discovery Responses were served on counsel for Havens and the Havens alter-ego entities at the request of said Havens counsel at the time.

<sup>2</sup> *Id.*

which Havens actively participated—and these same facilities that continue to support Pinnacle’s operations were found timely to have met the initial construction requirement. Joint Motion at ¶¶ 14-16, citing, *In the Matter of Applications of Mobex Network Services, LLC*, 19 FCC Rcd 24939, 24941-42, ¶ 6 (WTB 2004); *In the Matter of Applications of Mobex Network Services, LLC*, 25 FCC Rcd 3390, 3395, ¶ 9 (2010). Given the finding in these earlier proceedings as well as Havens’ participation in them, they are *res judicata* and present collateral estoppel on the issue of whether the stations were timely placed into operation within two years of original grant.<sup>3</sup> Nor is there record evidence in this proceeding that would call into question the earlier findings of the Wireless Bureau and Commission or the extensive evidence introduced by Maritime demonstrating timely initial construction. See Joint Motion at ¶¶ 14-16.

Accordingly, summary judgment on issue (g) is appropriate.

## **II. Public Interest Demands That The Pinnacle Operations Continue**

As shown in the sworn Pinnacle Discovery Responses, Pinnacle’s operations under the WRV374 site authorizations provide critical infrastructure and public safety communications for two New Jersey State agencies, protecting and serving millions and millions of drivers on the New Jersey Turnpike and Garden State Parkway and visitors to the Meadowlands complex every year. These facts are firmly established and are undisputed in the record. Clearly, maintenance of these operations serves the public interest. Any order in this proceeding that might have the effect of preventing these operations from continuing, such as cancellation of the underlying site authorizations, would have a very serious adverse impact on the public interest concerns served

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*Montgomery County Media Network*, 4 FCC Rcd 3749, ¶4 (1989) (“When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate,’ the principles of *res judicata* and collateral estoppel apply ‘to prevent relitigation of factual disputes’ resolved by the agency.” Quoting, *United States v. Utah Construction and Mining Co.*, 384 U.S. 394, 422 (1966)); *Comsat v. IDB Mobile Communications*, 15 FCC Rcd 7906, ¶1 (2000).



by these stations. Accordingly, the public interest demands continuation of the underlying site authorizations that support these critical operations.

### **III. Havens' Request to Reopen Discovery Should Be Rejected.**

Havens submitted three motions on December 2, 2013, all of which Pinnacle opposes. Havens' first motion requests that discovery be reopened. This motion is inappropriate and should not be granted. This proceeding had a very extended discovery period, which closed many months ago. Havens has not adequately justified why he was dilatory in undertaking discovery during the allotted period, nor has Havens justified why he waited so long after discovery closed before asking that it be reopened. Under these circumstances, Havens has failed to demonstrate that his situation warrants the very unusual step of reopening discovery at such a very late hour in the proceeding. In this respect, Havens' request that discovery be reopened is not even authorized under the scheduling order, which authorizes only "substantive" motions, such as ones for summary decision, rather than purely procedural motions such as those related to the timing of discovery.

Additionally, Havens has not shown with any specificity what additional discovery he would pursue if his unusual request is granted—he has not stated what parties, or what documents or what questions he would pursue. Rather, Havens asserts that only *if* the motion is granted will he then come forward with "specific requests, identifying the parties involved, the addresses and other contact information (for subpoenas to non-parties) and the documents and information of relevance for the Judges consideration."<sup>4</sup>

It is apparent from Havens' lack of specificity that Havens wants to undertake a

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<sup>4</sup> Havens First Motion Under Order 13M-19, at p.11.

generalized fishing expedition, *which is not allowed*.<sup>5</sup> Further, what Havens wants to fish for, as he asserts in his motion, is evidence relevant to character issues.<sup>6</sup> The request is unwarranted for that reason alone because character issues are not relevant to issue (g) which addresses only whether site based stations were timely constructed and whether such stations were permanently discontinued. Accordingly, Havens' attempt to reopen discovery is entirely unwarranted and should be rejected.

### **CONCLUSION**

Wherefore, as discussed above, the Joint Motion of the Enforcement Bureau and Maritime for Summary Decision on issue (g) should be granted. Further, Havens' request that discovery be reopened should be denied.

Respectfully submitted,

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Dated: December 16, 2013

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<sup>5</sup> *Metroplex Communications, Inc.*, 4 FCC Rcd 8149, fn11 (1989) ("discovery is not to be used as a 'fishing expedition'").

<sup>6</sup> See Havens' First Motion at pp. 11 *et seq.*

## CERTIFICATE OF SERVICE

I certify that on this 16<sup>th</sup> day of December, 2013, I caused copies of the foregoing document to be served by U.S. Postal Service, First Class postage prepaid, on the following:

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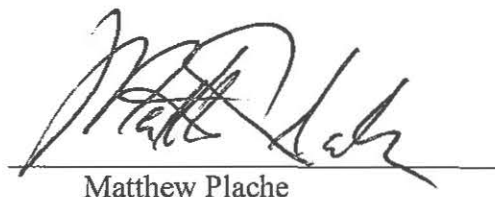
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